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*Counsel for Plaintiff, Debtor Lehman Brothers
Holdings Inc.*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	
In re	:	Chapter 11 Case No.
	:	08-13555 (JMP)
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:	(Jointly Administered)
	:	
Debtors.	:	
-----X	:	
	:	
LEHMAN BROTHERS HOLDINGS INC., on behalf	:	
of itself and as assignee of LEHMAN BROTHERS INC.,	:	
	:	Adv. Pro. No. 10-____
Plaintiff,	:	
	:	
v.	:	
	:	<u>COMPLAINT</u>
FRAGOMEN, DEL RAY, BERNSEN AND	:	
LOEWY, LLP,	:	
	:	
Defendant.	:	
-----X	:	

Lehman Brothers Holdings Inc. (“Plaintiff”), as debtor and debtor-in-possession, by its undersigned attorneys, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this adversary proceeding on behalf of itself and as assignee of Lehman Brothers Inc. (“LBI” or “Assignor”) under 11 U.S.C. §§ 547(b), 550(a) and 551 to avoid as preferential transfers certain payments that it made to Fragomen, Del Ray, Bernsen and Loewy, LLP (“Defendant”) on account of an antecedent debt during the 90 day period prior to commencing their respective bankruptcy cases in this Court, at which time Plaintiff and the Assignor were presumed to have been insolvent. Specifically, Plaintiff seeks entry of a judgment against the Defendant (i) pursuant to 11 U.S.C. § 547(b), avoiding the Avoidable Transfers (defined below), and (ii) pursuant to 11 U.S.C. §§ 551 and 550(a), automatically preserving the Avoidable Transfers for the benefit of the estate and directing the Defendant to pay to Plaintiff’s estate the amount of the Avoidable Transfers, plus interest, fees and costs allowable under applicable law.

JURISDICTION AND VENUE

2. This adversary proceeding is commenced pursuant to Rules 7001 and 7003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), as well as sections 547(b) and 550(a) of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

4. This adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

5. Venue is proper in this Court under 28 U.S.C. § 1409(a) because Plaintiff's bankruptcy case is pending in this district.

THE PARTIES

6. At the times of the Avoidable Transfers, Plaintiff was a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in New York, New York.

7. Commencing on September 15, 2008, and periodically thereafter, Plaintiff and certain of its subsidiaries commenced with this Court voluntary cases under the Bankruptcy Code (as applicable, the "Commencement Date"). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b). The Debtors are authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, and, accordingly, are authorized to prosecute preference actions.

8. On September 19, 2008, the Honorable Gerard E. Lynch of the United States District Court for the Southern District of New York, entered the Order Commencing Liquidation of the Debtor, LBI (the "LBI Liquidation Order"), pursuant to the provisions of the Securities Investor Protection Act of 1970 in the case captioned *Securities Investor Protection Corporation v. Lehman Brothers Inc.*, No. 08-CIV-8119 (GEL) (S.D.N.Y. Sept. 19, 2008). The LBI Liquidation Order, *inter alia*, appointed James W. Giddens as SIPA Trustee and removed the proceeding to this Court.

9. Upon information and belief, during the 90 day period prior to the Commencement Date, Plaintiff or the Assignor made transfers (the “Avoidable Transfers”) to the Defendant on the dates, and in the amounts, listed on **Exhibit 1**, which is expressly incorporated by reference into the Complaint.

10. Upon information and belief, Defendant is a Delaware limited liability partnership that did or transacted business within the United States, including the State of New York.

**COUNT I – TO AVOID PREFERENTIAL TRANSFERS
PURSUANT TO SECTION 547(b) OF THE BANKRUPTCY CODE**

11. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 10 as if fully set forth herein.

12. Pursuant to section 547(b) of the Bankruptcy Code, a debtor in possession may avoid any transfer of an interest of the debtor in possession in property (a) to or for the benefit of a creditor, (b) for or on account of an antecedent debt owed by the debtor in possession before such transfer was made, (c) made while the debtor in possession was insolvent, (d) made on or within 90 days, or in certain circumstances within one year, before the filing of the petition, and (e) that enables such creditor to receive more in satisfaction of its claims than it would receive in a case under chapter 7 of the Bankruptcy Code if the transfer had not been made.

13. During the 90 day period prior to the Commencement Date, Plaintiff or the Assignor made transfers (the “Avoidable Transfers”) to the Defendant on the dates, and in the amounts, listed on **Exhibit 1**.

14. The Avoidable Transfers were made to or for the benefit of Defendant, a creditor of Plaintiff or the Assignor.

15. The Avoidable Transfers were for or on account of antecedent debts owed by Plaintiff or the Assignor to Defendant before such transfers were made.

16. The Avoidable Transfers were made at a time when, pursuant to section 547(f) of the Bankruptcy Code, Plaintiff and the Assignor are presumed to have been insolvent.

17. At the time Plaintiff or the Assignor made the Avoidable Transfers to Defendant, the debts and liabilities of Plaintiff or the Assignor to the Defendant were unsecured obligations. The Avoidable Transfers thus enabled the Defendant to receive more in satisfaction of its claim against Plaintiff or the Assignor than it would have received in a case under chapter 7 of the Bankruptcy Code had the payment not been made.

18. By reason of the foregoing, Plaintiff is entitled to an order and judgment under section 547 of the Bankruptcy Code avoiding the Avoidable Transfers.

**COUNT II – TO RECOVER AND AUTOMATICALLY PRESERVE
PROPERTY FOR THE BENEFIT OF THE ESTATE PURSUANT TO SECTIONS
550(a) AND 551 OF THE BANKRUPTCY CODE**

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 18 as if fully set forth herein.

20. Plaintiff is entitled to recover and automatically preserve the Avoidable Transfers for the benefit of the estate pursuant to sections 550(a) and 551 of the Bankruptcy Code, respectively, to the extent they are avoided pursuant to section 547 of the Bankruptcy Code.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant (i) directing Defendant to pay to Plaintiff's estate the amount of the Avoidable Transfers in an amount to be determined that is not less than \$892,156.50, plus interest, fees and costs allowable under applicable law and (ii) granting to Plaintiff such other and further relief as may appear just and proper.

Dated: September 15, 2010
New York, New York

**CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP**

By: 

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Brothers Holdings Inc.*

EXHIBIT 1

Schedule of Transfers to Defendant

SCHEDULE 1
FRAGOMEN DELRAY AND BERNSEN

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
7/7/2008	0002073477	USD	CHK	\$85.00	5/31/2008	11362180	\$85.00
						11362182	\$85.00
				\$100.00	5/31/2008	11362192	\$100.00
						11362204	\$100.00
						11362209	\$100.00
						11362221	\$100.00
				\$250.00	5/31/2008	11362135	\$250.00
						11362138	\$250.00
						11362145	\$250.00
				\$275.00	5/31/2008	11362183	\$275.00
				\$318.00	5/31/2008	11362217	\$318.00
				\$500.00	5/31/2008	11362203	\$500.00
				\$858.00	5/31/2008	11362224	\$858.00
				\$1,000.00	5/31/2008	11362168	\$1,000.00
				\$1,018.00	5/31/2008	11362219	\$1,018.00
				\$1,493.00	5/31/2008	11362220	\$1,493.00
						11364136	\$1,493.00
				\$1,698.00	5/31/2008	11362174	\$1,698.00
				\$2,163.00	5/31/2008	11364160	\$2,163.00
				\$2,181.00	5/31/2008	11362156	\$2,181.00
						11362232	\$2,181.00
				\$2,350.00	5/31/2008	11362200	\$2,350.00
				\$2,856.00	5/31/2008	11362155	\$2,856.00
				\$3,018.00	5/31/2008	11362162	\$3,018.00
				\$3,338.00	5/31/2008	11362150	\$3,338.00
						11362152	\$3,338.00
						11362235	\$3,338.00
						11364126	\$3,338.00
						11364127	\$3,338.00
						11364158	\$3,338.00
				\$3,528.00	5/31/2008	11364161	\$3,528.00
				\$4,308.00	5/31/2008	11362230	\$4,308.00
				\$4,326.00	5/31/2008	11362231	\$4,326.00
				\$4,356.00	5/31/2008	11362178	\$4,356.00
						11364131	\$4,356.00
				\$4,538.00	5/31/2008	11364162	\$4,538.00
						11364165	\$4,538.00
				\$5,000.00	5/31/2008	11362158	\$5,000.00
						11362190	\$5,000.00

SCHEDULE 1
FRAGOMEN DELRAY AND BERNSEN

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
						11362213	\$2,000.00
						11362214	\$1,493.00
						11362216	\$100.00
						11362222	\$858.00
						11362225	\$858.00
						11362226	\$100.00
						11362227	\$3,338.00
						11362228	\$2,163.00
						11362229	\$275.00
						11362234	\$4,308.00
						11362236	\$2,181.00
						11362239	\$168.00
						11362240	\$4,326.00
						11362241	\$6,500.00
						11362242	\$2,181.00
						11362243	\$4,326.00
						11362246	\$2,163.00
						11362249	\$6,500.00
						11362250	\$1,018.00
						11362251	\$118.00
						11364129	\$6,906.00
						11364134	\$150.00
						11364144	\$5,856.00
						11364157	\$3,436.00
						11364159	\$818.00
						11364171	\$4,326.00
						11364173	\$4,356.00
						11364174	\$5,276.00
	0002075111 USD	USD	CHK	\$250.00	5/31/2008	11362131	\$250.00
	0002075214 USD	USD	CHK	\$250.00	5/31/2008	11362134	\$250.00
						11362147	\$250.00
				\$825.00	5/31/2008	11362163	\$825.00
				\$2,163.00	5/31/2008	11362223	\$2,163.00
				\$2,468.00	5/31/2008	11362170	\$2,468.00
				\$2,856.00	5/31/2008	11362173	\$2,856.00
				\$4,906.00	5/31/2008	11362201	\$4,906.00
7/24/2008	0002078433 USD	USD	CHK	\$250.00	4/30/2008	11348086	\$250.00
7/29/2008	0002079041 USD	USD	CHK	\$95.00	6/30/2008	11381889	\$95.00
				\$100.00	6/30/2008	11381905	\$100.00

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FRAGOMEN DELRAY AND BERNSEN

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
				\$218.00	6/30/2008	11381976	\$100.00
				\$268.00	6/30/2008	11381892	\$218.00
				\$518.00	6/30/2008	11381883	\$268.00
				\$858.00	6/30/2008	11381899	\$518.00
				\$1,125.00	6/30/2008	11381944	\$858.00
				\$1,236.00	6/30/2008	11381974	\$1,125.00
				\$1,323.00	6/30/2008	11381901	\$1,236.00
				\$1,493.00	6/30/2008	11381873	\$1,323.00
				\$1,618.00	6/30/2008	11381953	\$1,493.00
				\$1,698.00	6/30/2008	11381894	\$1,618.00
				\$1,800.00	6/30/2008	11381986	\$1,698.00
				\$2,000.00	6/30/2008	11381864	\$1,800.00
				\$2,018.00	6/30/2008	11381907	\$2,000.00
						11381908	\$2,018.00
						11381916	\$2,018.00
						11381917	\$2,018.00
						11381918	\$2,018.00
						11381922	\$2,018.00
						11381930	\$2,018.00
				\$2,125.00	6/30/2008	11381876	\$2,018.00
				\$2,163.00	6/30/2008	11381880	\$2,125.00
						11381983	\$2,163.00
				\$2,181.00	6/30/2008	11381895	\$2,163.00
				\$2,250.00	6/30/2008	11381885	\$2,181.00
				\$2,808.00	6/30/2008	11381868	\$2,250.00
						11381890	\$2,808.00
				\$3,018.00	6/30/2008	11381909	\$2,808.00
						11381914	\$3,018.00
						11381919	\$3,018.00
						11381921	\$3,018.00
						11381925	\$3,018.00
						11381928	\$3,018.00
				\$3,493.00	6/30/2008	11381955	\$3,018.00
				\$3,528.00	6/30/2008	11381882	\$3,493.00
				\$3,743.00	6/30/2008	11381912	\$3,528.00
				\$4,308.00	6/30/2008	11381893	\$3,743.00
						11381945	\$4,308.00
				\$4,356.00	6/30/2008	11381860	\$4,308.00

SCHEDULE 1

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
				\$4,906.00	6/30/2008	11381960	\$4,356.00
				\$5,138.00	6/30/2008	11381861	\$4,906.00
				\$6,585.00	6/30/2008	11381874	\$5,138.00
				\$279,302.00	6/30/2008	11381859	\$6,585.00
						11381862	\$196.00
						11381863	\$818.00
						11381865	\$4,356.00
						11381866	\$4,838.00
						11381877	\$1,500.00
						11381879	\$3,000.00
						11381881	\$1,068.00
						11381884	\$1,068.00
						11381887	\$275.00
						11381888	\$4,638.00
						11381902	\$4,906.00
						11381904	\$1,125.00
						11381906	\$100.00
						11381910	\$2,808.00
						11381911	\$2,018.00
						11381913	\$2,018.00
						11381915	\$2,018.00
						11381924	\$3,018.00
						11381926	\$3,018.00
						11381927	\$3,528.00
						11381929	\$2,018.00
						11381931	\$3,018.00
						11381932	\$3,743.00
						11381936	\$2,018.00
						11381937	\$3,725.00
						11381938	\$3,018.00
						11381939	\$2,163.00
						11381940	\$3,338.00
						11381942	\$3,018.00
						11381943	\$858.00
						11381946	\$1,838.00
						11381949	\$5,856.00
						11381950	\$3,906.00
							\$3,338.00

SCHEDULE 1
FRAGOMEN DELRAY AND BERNSEN

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
8/12/2008 0002082012	USD	CHK		\$100.00	6/30/2008	11381970	\$2,536.00
				\$858.00	6/30/2008	11381941	\$100.00
				\$1,036.00	6/30/2008	11381867	\$858.00
				\$2,163.00	6/30/2008	11381886	\$1,939.00
						11381971	\$2,536.00
						11381979	\$2,163.00
				\$2,181.00	6/30/2008	11381891	\$2,163.00
				\$2,350.00	6/30/2008	11381869	\$2,181.00
				\$2,808.00	6/30/2008	11381878	\$2,350.00
						11381984	\$2,808.00
				\$3,018.00	6/30/2008	11381934	\$2,808.00
				\$4,356.00	6/30/2008	11381872	\$3,018.00
				\$4,688.00	6/30/2008	11381871	\$4,356.00
				\$5,356.00	6/30/2008	11381947	\$4,688.00
8/18/2008 0002082464	USD	CHK		\$6,500.00	6/30/2008	11381967	\$5,356.00
				\$525.00	5/31/2008	11362172	\$6,500.00
				\$1,475.00	11/30/2007	11285551	\$525.00
				\$1,500.00	3/31/2008	11334772	\$1,475.00
				\$3,820.00	11/30/2007	11285569	\$1,500.00
				\$4,326.00	4/30/2008	11347995	\$3,820.00
				\$4,356.00	4/30/2008	11348016	\$4,326.00
						11364151	\$4,356.00
				\$5,856.00	3/31/2008	11334735	\$4,356.00
				\$5,981.00	3/31/2008	11334769	\$5,856.00
				\$6,585.00	5/31/2008	11362247	\$5,981.00
							\$6,585.00

SCHEDULE 1
FRAGOMEN DELRAY AND BERNSEN

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
8/27/2008	0002084370	USD	CHK	\$78,299.00	8/15/2007	11242297	\$1,305.00
					11/30/2007	11285549	\$100.00
						11285555	\$100.00
						11285570	\$100.00
						11285597	\$800.00
						11287359	\$2,000.00
					3/31/2008	11334796	\$2,500.00
						11334805	\$5,856.00
						11334807	\$1,500.00
						11334814	\$2,625.00
						11334838	\$750.00
						11334879	\$4,856.00
					4/30/2008	11347984	\$1,341.00
						11348083	\$5,000.00
					5/31/2008	11362218	\$4,326.00
					7/31/2008	11392920	\$100.00
				\$100.00		11392940	\$100.00
					7/31/2008	11392921	\$150.00
				\$318.00	7/31/2008	11392963	\$318.00
				\$400.00	7/31/2008	11392898	\$400.00
				\$768.00	7/31/2008	11392980	\$768.00
				\$1,128.50	7/31/2008	11392930	\$1,128.50
				\$1,236.00	7/31/2008	11392924	\$1,236.00
				\$1,323.00	7/31/2008	11392900	\$1,323.00
				\$2,181.00	7/31/2008	11392972	\$2,181.00
				\$2,808.00	7/31/2008	11392882	\$2,808.00
						11392905	\$2,808.00
						11392954	\$2,808.00
				\$2,856.00	7/31/2008	11392907	\$2,856.00
						11392913	\$2,856.00
						11392939	\$2,856.00
						11392987	\$2,856.00
						11392992	\$2,856.00
				\$2,906.00	7/31/2008	11392884	\$2,906.00
				\$3,018.00	7/31/2008	11392981	\$3,018.00
						11392985	\$3,018.00
				\$3,338.00	7/31/2008	11392874	\$3,338.00
						11392893	\$3,338.00
						11392926	\$3,338.00

SCHEDULE 1
FRAGOMEN DELRAY AND BERNSEN

BANK CLEAR DATE	PAYMENT ID	PAYMENT CURRENCY	PAYMENT METHOD	PAYMENT AMOUNT	INVOICE DATE	INVOICE NUMBER	PREFERENCE AMOUNT USD
						11392964	\$1,493.00
						11392966	\$5,000.00
						11392967	\$5,000.00
						11392973	\$3,018.00
						11392979	\$5,856.00
						11392983	\$4,356.00
						11392984	\$2,018.00
						11392986	\$2,468.00
						11392988	\$858.00
9/11/2008	0002087708	USD	CHK	\$250.00	5/31/2008	11362136	\$250.00
						11362144	\$250.00
				\$5,856.00	3/31/2008	11334724	\$5,856.00
9/18/2008	0002087510	USD	CHK	\$100.00	7/31/2008	11392916	\$100.00
				\$300.00	7/31/2008	11392879	\$300.00
						11392901	\$300.00
				\$2,000.00	7/31/2008	11392861	\$2,000.00
				\$2,063.00	7/31/2008	11392938	\$2,063.00
				\$2,174.00	7/31/2008	11392886	\$2,174.00
				\$3,018.00	7/31/2008	11392974	\$3,018.00
				\$3,406.00	7/31/2008	11392958	\$3,406.00
				\$3,518.00	7/31/2008	11392864	\$3,518.00
				\$5,000.00	7/31/2008	11392942	\$5,000.00
Grand Total							\$892,156.50